

EXHIBIT H

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 MDL No. 2542

4 Docket No. 1:14-MD-02542-VSB

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6 IN RE: KEURIG GREEN MOUNTAIN

7 SINGLE-SERVE COFFEE ANTITRUST LITIGATION

8 - - - - - x

9 30(b)(6) VIDEOTAPED DEPOSITION OF KEURIG GREEN MOUNTAIN

10 Through MARK WOOD

11
12 December 3, 2019

13 8:43 a.m.

14
15 Marriott Hotel

16 One Burlington Mall Road

17 Burlington, Massachusetts

18 Reporter: Rosemary F. Grogan, RPR, CSR No. 112993
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1 Q. Okay. Do you think it was -- do you attach 09:23:28
2 any significance to the fact that Keurig, according to
3 your testimony, obtained the cups before filing the
4 lawsuit against Sturm?

5 A. Do I attach any significance -- 09:23:52

6 Q. Correct. 09:23:57

7 A. -- to that fact? 09:23:58

8 Q. Correct. 09:23:59

9 A. Yes, we had the actual product that was being 09:24:02
10 sold in market to consumers and that provided our
11 factual basis for filing the suit.

12 Q. And do you -- and if you hadn't been in 09:24:15
13 possession of the actual product that was sold in the
14 market to consumers, would you have had a factual basis
15 for filing the suit?

16 MS. NEWTON: Objection as to form; calls for 09:24:31
17 legal conclusion.

18 A. Yeah, I -- I think until the product was 09:24:39
19 provided to consumers, the infringing action wouldn't
20 have occurred, and until it was in the marketplace, the
21 violation of our trademarks and trade dress could not
22 have occurred.

23 Q. Right. And did you attach any significance to 09:24:59
24 the fact that, according to your testimony, you had
25 tested the cups, the 30 cups, I think I heard you say,

1 prior to bringing the lawsuit against Sturm?

2 A. Do I attach any significance? I do. 09:25:21

3 Q. What significance? 09:25:23

4 A. We were very concerned about the quality of 09:25:25
5 the product and the potential for, first and foremost,
6 harm to consumers, and, secondly, to our reputation, the
7 reputation of our product and our system.

8 Q. And those tests -- strike that. Let me start 09:25:46
9 over.

10 That 30-cup test provided you, in your 09:25:51
11 view, with the basis for the concern about the quality
12 of the product and harm to consumers, right?

13 A. It did. 09:26:04

14 Q. Did you have any basis for questioning the 09:26:06
15 quality of the Sturm product before you conducted that
16 test of the 30 cups?

17 A. We had concern prior to it knowing how 09:26:20
18 difficult it was to properly manufacture a cup, but we
19 would not have had a factual basis prior to that point.

20 Q. Okay. Who made the decision -- we talked a 09:26:32
21 little bit about -- strike that.

22 When was the first time that Keurig 09:26:53
23 became aware that an actual consumer had used a Sturm
24 product in a Keurig brewer?

25 A. I -- I believe once they were available to -- 09:27:31

1 for sale to consumers, that we -- we would have believed
2 that that, too, occurred. So I would say that would
3 have been during the same month of September of 2010.

4 Q. Do you know what consumer first used a Sturm 09:27:52
5 product in a Keurig brewer?

6 MS. NEWTON: By name? Are you asking for a 09:27:58
7 name?

8 MR. BADINI: Yes. 09:28:02

9 A. Yeah, I -- I think, as you know, that's 09:28:03
10 virtually impossible to tell.

11 Q. Do you know what Keurig brewer was used for 09:28:06
12 that first use by a consumer of a Sturm product?

13 A. Without knowing the consumer, that would also 09:28:17
14 be virtually impossible to tell.

15 Q. Other than a consumer, meaning somebody who 09:28:22
16 purchased the product at retail or I suppose in an
17 office setting, are you aware of any other individual
18 who was the -- strike that. Let me start all over.

19 Putting aside consumers who purchased at 09:28:51
20 retail, are you aware of any other individuals who put a
21 Sturm product through a Keurig brewer prior to the time
22 you filed the lawsuit on October 1, 2010?

23 MS. NEWTON: Other than your client? Is that 09:29:13
24 the question?

25 A. Yeah, I -- I don't know how you're defining 09:29:17

1 people other than consumers. I would suspect that
2 someone at Tree- -- Sturm/TreeHouse brewed a cup at some
3 point before they were available to consumers. I would
4 certainly hope so.

5 Q. Okay. You suspect that, but do you have any 09:29:44
6 facts suggesting that that was, in fact, the case?

7 A. No, but if it wasn't the case, it would be 09:29:54
8 flagrantly irresponsible of TreeHouse/Sturm not to do
9 so.

10 Q. Well, you don't know, for example, whether any 09:30:03
11 tests that Sturm did on its cups on Keurig brewers were
12 even done in the United States, do you?

13 A. I don't. 09:30:15

14 Q. And if they were done outside of the United 09:30:17
15 States, would they be covered by U.S. patents?

16 MS. NEWTON: Objection. 09:30:23

17 I'll caution the witness not to disclose any 09:30:24
18 legal opinion, if you've got one.

19 THE WITNESS: So are you instructing me not to 09:30:31
20 answer?

21 MS. NEWTON: No, I'm not. I'm saying that -- 09:30:34

22 THE WITNESS: Okay. 09:30:38

23 MS. NEWTON: -- answer Mr. Badini, unless it's 09:30:39
24 based on an opinion you got from counsel.

25 A. So my understanding is if work was done 09:30:45